

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2006 SEP 11 P 1:18

UNITED STATES OF AMERICA, ex rel. VEN-A-)
CARE OF THE FLORIDA KEYS, INC., by and)
through its principal officers and directors,)
ZACHARY T. BENTLEY and T. MARK JONES,) Civil Action
) No. 05-11084-MEL
Plaintiff,) (Consolidated with certain
v.) claims severed from No. 00-
) 10698-MEL)
DEY, INC.; EM PHARMA, INC.; EMD)
PHARMACEUTICALS, INC.; LIPHA, S.A.;)
MERCK-LIPHA, S.A.; and MERCK KGaA,)
)
Defendants.)

UNITED STATES' NOTICE OF RELATED CASE

Pursuant to Local Rule 40.1(G), the United States notifies the Court that this matter may be considered related to a multidistrict litigation proceeding, In Re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456, now pending before United States District Judge Patti B. Saris in this District.

The instant matter involves allegations that the defendants (hereinafter referred to as "Dey") violated the False Claims Act, 31 U.S.C. § 3729-33 ("FCA"), by inflating average wholesale prices ("AWPs") and other prices reported to price compendia relied upon by the Medicare and Medicaid programs in setting pharmaceutical reimbursement rates. The cases pending before Judge Saris in MDL No. 1456, involve claims that "pharmaceutical defendants engaged in fraudulent marketing, sales and/or billing schemes by unlawfully inflating the average wholesale price of their Medicare covered


prescription drugs in order to increase the sales of these drugs to health care professionals and thereby boost the pharmaceutical companies' profits." In re Immunex Corp. Average Wholesale Price Litigation, 201 F. Supp. 2d 1378, 1380 (J.P.M.L. 2002) (ruling of Judicial Panel on Multidistrict Litigation transferring cases to Judge Saris). Dey is a defendant in MDL No. 1456.

The United States also notes that it is now a plaintiff in another FCA case that was recently transferred to the District of Massachusetts and assigned to Judge Saris as part of MDL No. 1456. That case, captioned United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al., Civil Action No. 06-11337-PBS, originated in the Southern District of Florida and makes allegations against Abbott similar to those made against Dey in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

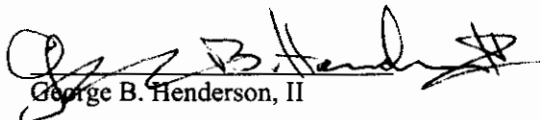
I hereby certify that a copy of the foregoing document and proposed Order were served, via first class mail, on this 11th day of September, 2006, upon the following counsel:

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